

DRAFT

TRANSITION ADVISORY COMMITTEE

October 5 and 6, 2000

Room 102, State Capitol Building

Original Minutes with Attachments

COMMITTEE MEMBERS PRESENT

Sen. Fred Thomas, Chair	Bob Anderson
Rep. Joe Quilici, Vice Chair	Ed Bartlett
Rep. Ernest Bergsagel	Neil Colwell
Rep. Tom Dell	Art Compton
Sen. Steve Doherty	Kathy Hadley
Rep. Stanley Fisher	Dave Kinnard (for Paul Farr)
Rep. Royal Johnson	Gene Leuwer
Sen. J. D. Lynch	Bob Nelson
Sen. Walter McNutt	Don Quander
Rep. Ray Peck	Roma Taylor
Sen. Mike Sprague	Dave Wheelihan

COMMITTEE MEMBERS EXCUSED

Sen. Bill Wilson
Stephen Bradley
Stan Dupree

STAFF MEMBERS PRESENT

Stephen Maly
Judy Keintz, Secretary

VISITORS' LIST

Attachment #1

COMMITTEE ACTION

- < Approved the minutes of the July 23, 2000 meeting.
- < Recommended that a letter be sent to the Governor requesting that the Northwest Power Planning Council engage a forum for the purpose of determining the most appropriate fashion to form a unified coalition for the preservation of the BPA system.
- < Recommend to the full Legislature an extension to the period in which universal systems benefits

charges and programs are required by law. This would be a two-year extension at the current rate.

- < Recommended that § 69-8-402(2)(b) be amended to add the words “amortized or non-amortized” expenditures.
- < Set next meeting date for December 7, 2000.

I OPENING REMARKS

CHAIRMAN THOMAS called the meeting to order at 9:00 a.m. Roll call was noted; SEN. BILL WILSON, STEPHEN BRADLEY, and STAN DUPREE were excused, **Attachment 2**.

II FORUM ON THE INTERRELATED ISSUES OF WATER, POWER, AND FISH BEING ADDRESSED BY THE LEGISLATIVE COUNCIL ON RIVER GOVERNANCE

< *Bonneville Power Administration*

Steven Wright, Deputy Administrator of the Bonneville Power Administration (BPA), provided a report on the status and issues involving the BPA, **Exhibit 1**. The BPA was created under the Bonneville Project Act of 1937 as a result of the FDR Administration. The theory behind public preference was threefold: 1) rural electrification and development; 2) yardstick for competition - power at cost; and 3) development of public waterways. The Eisenhower Administration was less willing to make investments in the federal hydro power system and this resulted in more development by non-federal hydro developers to include projects on the Columbia and Snake Rivers.

Currently the BPA can store about 30% of the average annual runoff of the Columbia system. The Mississippi system is able to store 300% of the average annual runoff. The Canadians were interested in building storage facilities, but did not have the economic wherewithal to proceed. An agreement was negotiated which involved dams being built on the Canadian side of the border that allowed additional generation at U.S. facilities downstream. The additional generation at the U.S. facilities would be shared on a 50/50 basis. Canada then sold its rights to the U.S. for \$250 million for 30 years. This money was to build dams. The northwest recognized that there would be a huge surplus of electricity for a number of years. The intertie system to California was developed. The legislation that authorized the interties included the concept of regional preference. This provided that one section of the country would have the first right to purchase power from the federal hydro system. The surplus could then flow outside of the region.

In the 1970s, there was a need for resource acquisition. There are 120 utilities in the region that serve close to ten million people. Benefits were available to IOU residential and small farm customers and 20 year contracts were developed for direct service industries (DSIs).

As a region, **Mr. Wright** asserted, we missed the boat on the Energy Policy Act of 1992. We did not realize that the change being made in the Energy Policy Act fundamentally restructured the electricity industry.

There have been a number of proposals in Congress that the BPA should sell power at market-based rates. By the mid-1990s, the BPA's costs were above market for a two to four year period. This was the result of decreased natural gas prices, increased efficiency of combustion turbines, and good water years in the northwest. On a long term basis, the BPA expects the market cost for power to be higher. On a net present value basis, the system is of tremendous value to residents of the northwest. Other regions in the country are also aware of this benefit and are seeking to capture the benefit in a different fashion. Consequently, there is a high likelihood that there will be national energy legislation in the next session of Congress. The Northeast-Midwest Coalition involves a group of Congressmen who believe that jobs are moving from the rust belt to the south and west. Their goal is to stem that flow by reducing the regional cost differential for electricity. Lower rates cause industry to move away from their region. In the last session, they introduced legislation to provide that the federal power marketing administration move to market-based rates and the benefit between cost and market should be split between the taxpayer and the environment. There are 30 states that are served by federal power. This would include 60 seats in the Senate and there should be no problems with the Senate vote. The House has only 140 districts served by federal power. This means that there are 295 districts that are not. In order to make sure that cost-based rates can be preserved, the Northwest has taken the position that it will cover the costs in the situation of stranded costs.

Fish issues are of national importance. The region currently supports not breaching the dams on the Snake River in Idaho and development of an alternative plan. This plan will need to be unified and credible.

Energy legislation will more than likely include the formation of regional transmission organizations (RTOs). There has been a decision to move forward with wholesale competition and the best way to do so is to separate generation assets from transmission assets. There is an interest on the part of people outside of the region to move power across the Northwest system.

A San Diego Congressman has introduced legislation to eliminate regional and public preference. The issue being presented is that the Northwest system was built by the federal taxpayers and California should have a right to the system as well. California has 54 votes in Congress. **Mr. Wright** emphasized that the Northeast-Midwest Coalition has been successful in its request for the GAO to initiate an investigation of the BPA's marketing efforts. The question is whether or not the BPA is profiting at the expense of

California.

There are a significant number of mergers occurring around the country. Increased economic power equals increased political power.

In addition to the above-mentioned threats, the biggest threat the Northwest faces is "ourselves"--the people in this region. This provides a potential for losing a portion of the benefits to other parts of the country. There are questions in regard to the future of the aluminum companies, residential/small farm preference, conservation/renewables funding, industrial allocations, fish and wildlife mitigation, resource acquisition, and the urban versus rural issue.

It is necessary to preserve the region's benefits of cost-based rates. The four states could focus on a regionalization plan to capture the benefits of the system and place this in an arena where the Congress is no longer deciding their fate. An incremental change option would be to proceed with a RTO, a unified plan on fish recovery, and to defend and allocate power benefits.

There are difficult issues which need to be addressed before regionalization is considered. Public preference has been in the law for 60 years. It will be difficult to retain if it is moved from the federal statutes to a new set of statutes. In addition, there are both U.S. and Tribal Treaties that need to be addressed. In regard to the Endangered Species Act (ESA), there have been a series of attempts to regionalize ESA problems. These attempts have all failed because the environmental community believes that protection of the environment needs to occur at the national level. Governance issues will need to be sorted out. Financial accountability includes being responsible for both the good and bad decisions. There will be some bad decisions which will have costs associated with them. The negotiated price with the federal government will also be a challenge.

SEN. SPRAGUE questioned the plans for future supply of generation. He specifically questioned the number of nuclear plants, online or off line, in the supply arena. **Mr. Wright** believed that the current price spikes and increases are due to several factors. One factor is lack of supply relative to demand. Gas prices are up more than double from six months ago. The California market has exacerbated the problems with respect to price volatility. Sixty percent of our supply is hydro electricity. Supply problems are significant both in regard to price and reliability. There is one operating nuclear plant in the region. The construction of the other facilities was discontinued in the mid-1980s. The projects have been torn down.

REP. BERGSAGEL questioned the status of the 30-year contracts with Canada. **Mr. Wright** clarified

that there were three projects built in Canada and the contracts terminate 30 years from the time they came on line. The return started in 1998 and continues to 2003.

REP. BERGSAGEL questioned the length of the process for developing a hydro or nuclear plant. **Mr. Wright** stated that those two resources have not been considered for a long time. As a result of the Electric Consumers Protection Act of 1984, the process to license a new hydro site is extremely difficult. The capital costs associated with a nuclear plant make this a prohibitive option.

REP. QUILICI questioned whether there could be any allocation of power for the distribution and service companies to provide power as a default supplier. **Mr. Wright** remarked that they reviewed this question very long and hard. In 1995, the region made a decision to make the Northwest Act work. The world has changed dramatically and a lot of thought behind benefit allocation does not apply today. The BPA was going to be a resource supplier which would provide benefits for public power. It therefore made sense to provide benefits to residential customers and small farm customers of the IOUs. Bonneville did not become a resource supplier by increasing its generating capacity and thus the size of the pie was not expanded.

REP. QUILICI questioned whether breaching the dams on the Snake River was still a consideration. **Mr. Wright** noted that this is an ongoing issue. The administration's opinion is that it is not their intention to proceed with breaching the four lower Snake River dams at this time. An alternative regime will be put in place that seeks to restore the salmon through a series of measures that are primarily hydro activities. The proposal will be tested at five years and eight years. If the standards are met, they will not consider breaching the dams. If they are not meeting the standards, the question of breaching the dams will be back on the table.

REP. QUILICI questioned whether the BPA is acquiring power in the market. **Mr. Wright** affirmed that it was. There are 8,000 megawatts in the Federal Columbia system. They will need to acquire 3,000 additional megawatts at market prices and meld it with the 8,000 megawatts. The size of the benefits have not increased and remain at 8,000 megawatts of low cost power. The actual amount they will acquire is dependent on the contracts that are signed.

REP. QUILICI questioned whether any of this load was being sold to California. **Mr. Wright** stated that surplus was offered first in the Northwest and then to California.

REP. FISHER questioned whether an environmental impact statement (EIS) would be necessary for breaching the dams. **Mr. Wright** affirmed that an EIS would be necessary. They have an EIS on

breaching the four lower Snake River dams. There have been 50 public meetings. If the decision is delayed for five years, supplementation of the EIS will be necessary.

REP. BERGSAGEL requested information on the alternatives for salmon mitigation. **Mr. Wright** explained that they have prepared a paper entitled the “All H” paper. This addresses hydro, harvest, habitat, and hatcheries. In respect to hydro, they are making modifications to the dams to improve juvenile survival downstream. In the early 1990s the survival of juveniles going downstream was in the range of 30%. Currently survivals are in the range of 55% to 60%. They have sought the option of being able to implement activities in the habitat arena if this was a lower cost alternative than making modifications to the dams. The National Marine Fisheries Service is open to that idea. These activities could include repairing riparian areas and buying land. They fund a fair number of hatcheries in the region.

REP. BERGSAGEL questioned how the regionalization process could be implemented. **Mr. Wright** stated that the first step would be to have discussions regarding allocating the benefits of the system.

CHAIRMAN THOMAS requested more information regarding the status of the subscription and rate making process. **Mr. Wright** remarked that their goal had been to conclude subscription by September 30 of this year. The fundamental problem is the price volatility and the higher average prices. They are seeking rate adjustment clauses in their rates so they will be able to cover their costs. They are in the process of developing a new rate case. Their goal is to have this concluded by spring. They are hoping to have as little discussion as possible in regard to reallocation of benefits. All of their contracts terminate by October 1, 2001.

CHAIRMAN THOMAS requested more information regarding the DSI contracts. **Mr. Wright** remarked that there are a number of aluminum plants across the region that use large volumes of electricity. Historically they have been direct service customers of the BPA. They do not work through a local utility. The BPA served the full DSI load until 1995. In 1995 their costs went above market and a number of the companies sought to leave the BPA system. New five-year contracts were negotiated in which the DSIs removed about one-third of the load. The load went from 3,000 megawatts to 2,000 megawatts. The subscription proposal for the next period is reduced to 1,500 megawatts. When those agreements were put into place, today’s high market prices were not anticipated. A public process has been put into place to address the value of the aluminum industry to this region and also to what extent the region is willing to share a greater piece of the pie with the aluminum companies in order to ensure their survival.

REP. BILL TASH stated that the Legislative Council on River Governance met three years ago in Boise, Idaho. The purpose was to represent constituent concerns. It is very important for the presence of a regional team to negotiate solutions.

REP. AUBYN CURTISS noted that it is very important for legislators to be involved in regional issues. The Council believes there should be a closer relationship with the Governors as they negotiate on behalf of the states. A mission statement has been developed for the Council and is being followed. It is important to identify common ground and lobby the appropriate agencies and/or the Congressional delegations relative to protection of state sovereignty and other state issues. The federal government needs to live up to its commitment and provide the states with a fair share of funding.

John Etchart, Northwest Power Planning Council, stated that Montana has a stake in one of the most valuable hydro electric systems on the planet. The operation of that hydro system has a direct impact on our resources. The Northwest Power Planning Council is a regional compact. The Council members serve at the pleasure of the Governor with the ratification of the Legislature. Each state has two seats on the Council. The region has a population of approximately 10 million people and less than 10% of that amount is in Montana. He added that Montana has over 40% of the storage available to the federal hydro system.

The ratepayer who buys BPA power has a responsibility to mitigate the fish and wildlife damages occasioned by the construction and operation of the federal hydro system. However, the ratepayer should not have to bear all the ESA requirements. The regional mandate is to protect all species in the Northwest that have been affected. The Council has a mandate to balance the recovery of the fish and wildlife with the continued assurance of an affordable, efficient, and reliable power supply. Montana should do everything it can to protect its rightful claim on the BPA system. There is risk involved in the assumption of this system. The BPA has approximately \$16 billion of debt on its books. This debt must be served. This hydro system is also an irrigation system, a recreation system, a flood control system, a fish flow enhancement system, and a transportation system.

Governor Racicot believes the right way to approach the regionalization process is on an incremental basis. The four governors would like to see the Council strengthened. Added authority would mean that federal agencies would have to comply with the regionally developed fish and wildlife plan. This is a logical first step towards increasing regional control. The governors also would like to find a suitable and satisfactory way for the Tribal interests in the Northwest to be fairly and equitably represented in decisions.

REP. CURTISS provided a statement from the Lincoln County Commissioners, **Exhibit 2**. They have

found that the responsibility of the ESA and the Clean Water Act overlap up to 80% in some cases.

REP. BERGSAGEL questioned the status of the game plan for the Northwest regionalization process. **Mr. Wright** noted that Congress moves more slowly than state legislatures. He believes that if a plan were to be developed within the next six months it would still be included in the beginning of the process. **Mr. Etchart** remarked that the recent upheaval in the power market will force Congress to take action. He believes that Governors Racicot and Kitzhauber will be developing legislation. They would like to hold hearings in the region. This would be a very good first step.

REP. BERGSAGEL questioned whether the Legislative Council on River Governance would be willing to take the lead in bringing the parties together to address the issue. REP. TASH affirmed that they would do so in concert with the Governors of the four states as well as the other entities involved.

REP. CURTISS stated that they have developed a draft four-state compact agreement. It has not been adopted. Resolutions are also being developed. They have started formal communications with the Governor's Office.

REP. FISHER noted the importance of a regionalized plan. The Montana Legislature needs to have a plan in place by June 2002 to protect the ratepayers from steep price increases.

REP. JOHNSON questioned whether national energy legislation would compel the retail restructuring in the other three states in the region. **Mr. Wright** believed it would not compel the states to move toward restructuring. It has been noted that fifty percent of the citizens in this country live in states that have been deregulated and thus the debate is no longer necessary. There needs to be federal legislation in regard to reliability. There is a problem with prices going up at the wholesale level but consumers' not experiencing prices going up at the retail level.

REP. BERGSAGEL maintained that someone needed to take the lead in this process. His recommendation would be that the Northwest Power Planning Council step into this role. **Mr. Etchart** believed that the Council would not be able to take this step without the insistence of the four governors. They are the four elected senior leaders in the region. Not all the states have the same amount of volition as Montana in regard to changing the status quo.

COMMISSIONER ANDERSON remarked that the Council is the right entity to lead the process. The governors need to include the region's congressional delegation.

Motion: REP. BERGSAGEL MOVED THAT THE TAC DRAFT A LETTER TO THE GOVERNOR REQUESTING THAT THE NORTHWEST POWER PLANNING COUNCIL ENGAGE IN THIS FORUM FOR THE PURPOSE OF DETERMINING THE MOST APPROPRIATE FASHION TO FORM A UNIFIED COALITION FOR THE PRESERVATION OF THE BPA SYSTEM.

SEN. LYNCH asked that the Congressional delegation be included.

REP. BERGSAGEL included this into his motion.

REP. TASH stated that the Legislative Council on River Governance will be meeting in Boise on December 9th and 10th. MR. MALY added that the Northwest Power Planning Council will be invited to attend the meeting.

Vote: THE MOTION CARRIED UNANIMOUSLY.

The Committee adjourned for the day at 4.30 p.m. and reconvened on Friday, October 6^h at 9:00 a.m.

III ADOPTION OF MINUTES

Motion/Vote: REP. BERGSAGEL MOVED THAT THE MINUTES OF THE JULY 23, 2000, TAC MEETING BE APPROVED AS WRITTEN. THE MOTION CARRIED UNANIMOUSLY.

IV THEMATIC OVERVIEW: SHOCK OF THE NEW: CHANGES IN THE GENERATION/TRANSMISSION/DISTRIBUTION OF ELECTRICITY

MR. MALY provided an overview of the changes in the generation, transmission and distribution of electricity, **Exhibit 3**. Structural changes have occurred, most notably with the Montana Power Company exiting the field. The buying cooperative which was formed to aggregate customers and purchase inexpensive power from the federal system is unable to function due to conditions and structures that were not anticipated. The BPA system is facing many problems. There have been unanticipated price spikes on a regional basis and an unanticipated doubling in the price of natural gas on a nationwide basis. In the Northwest and California there is a shortage of supply with uncertainty as to how supply will meet demand. After 2002, there is no longer a link between electricity generation in Montana and electricity distribution to Montana's consumers.

There are ongoing struggles over stranded costs with related litigation. On a national basis, there is a polarization of opinion that is affecting the climate of discussion regarding deregulation. The customer education and pilot programs have not been very energized. The maximum percentage of small customers who have moved to choice is approximately 10%. In California, this number is around 2%. Suppliers have not shown an interest to serve this market. In Montana, there are two companies who have obtained a license to supply power to small customers.

There is a conundrum at work. The restructuring laws are laced with ambiguities and contradictory logic. He questioned how market conditions would develop with the statutory impediments of the safety nets of default supply and a rate moratorium. These safety nets are included in the deregulation legislation in most states that are undertaking restructuring and they do obstruct market forces. The buying cooperative empowered to aggregate customers was statutorily prohibited from being a distribution utility and therefore was unable to qualify for BPA preference power.

One way to address the price spikes is to augment the supply in the state. Some suggestions include bringing in power from a neighboring grid, granting tax incentives to speed the construction of new plants, augmenting transmission linkages, and installing incentives for distributed generation. Restructuring demand is another option that could be encouraged by expanding conservation, aggregating purchasers, and diversify services and price structures. The default supply provision could be clarified to accommodate forward purchases and share the risks of making suboptimal choices.

Policy tools and adjustment opportunities might include the following:

- T Extend the transition period to 2004, or beyond;
- T Modify USBC purposes, amounts, and timeline;
- T Enable Cooperatives to serve urban customers;
- T Allow the MEBC to own distribution system; and/or
- T Change tax/environmental laws to induce or hasten construction of conventional or distributed generation.

MR. MALY referred to a document entitled “Duties and Deadlines”, **Exhibit 4**, which provided the provisions in the law that require action by the TAC, PAC, and/or the Utilities. The TAC must provide recommendations to the next Legislature regarding default supply. The PSC has an obligation to write and implement rules for licensure of default supplier and also to designate the default supplier. The PSC also will need to issue orders in response to transition plan filings. The MPC has an obligation to report on the results of pilot programs, and to educate customers about choice. The duty to educate is passed onto their

successor utility.

MR. WHEELIHAN noted that on page 3 of the handout the third bullet stated that Montana consumers are exposed to regional market prices as of June 30, 2002. He stated that this would be true for MPC consumers but the time lines are different for the Cooperatives and the MDU.

MS. HADLEY maintained that the MEBC is alive and well. A set of procedures and rules need to be followed to become a default supplier. This includes obtaining a license and being selected as a default supplier. The MEBC is challenging the BPA's decision regarding disallowing preference power due to the fact that the MEBC does not own poles and wires. They are working to aggregate small customers.

COMMISSIONER ANDERSON remarked that the real explanation for the price spikes is the relationship between supply and demand. We do not have a demand response in the electricity market. In addition to conservation programs, this includes supply side bidding, price signals, real time pricing, etc. He emphasized the importance of the state of California on Montana's electricity market. Adding supply will not affect the wholesale price in Montana because the state is part of a regional market.

V STATUS REPORTS ON MPC'S STATUTORY OBLIGATIONS AND BUSINESS ACTIVITIES

MR. BARTLETT announced that Northwestern Corporation of Sioux Falls, S.D., has agreed to buy the stock of the MPC under a buy/sell agreement. This transition should be completed within six months. The sales price was \$1.1 billion. Approximately \$500 million was an assumption of debt of the MPC and approximately \$600 million will be cash at the time of closing. The MPC will continue to operate in Montana and Northwestern Corporation intends to continue to operate under the name of MPC in Montana. The Northwestern Corporation is a publicly traded company and their stock symbol is NOR. Their website is northwestern.com.

Pat Corcoran, MPC, stated that the MPC will making a filing with the PSC that will detail the sale as it relates to MPC continuing to operate as a utility and satisfying all the statutory obligations of Montana law. The Northwestern Corporation will become the owner of the stock of MPC. The "Tier II" proceedings are still suspended before the PSC awaiting the outcome of the Supreme Court decision on the treatment of transition costs. This involves whether tracking is an acceptable method for dealing with transition costs going forward or whether the law calls for a lump sum decision. The MPC has made a filing with the PSC asking to increase the energy supply component to rights to recover increased qualifying facility (qf) costs. The MPC continues to incur those costs as an operating cost. Since 1998, the qf costs have increased by

\$9.2 million. On February 2nd of this year, electric supply rates were decreased by \$16.8 million as a result of the generation sale. Technically, the MPC can increase rates up to the \$16.8 million level and still satisfy the requirements of the supply rate moratorium. The MPC continues to operate under the buyback contracts with PP&L Montana for their electricity supply. The buyback contracts do not allow for competition in the marketplace.

A handout entitled "The Transition to Energy Choice - Report of Activity July 1, 1998 through June 30, 2000" was provided to the Committee, **Exhibit 5**. An additional handout regarding MPC's utility restructuring and customer choice information was provided, **Exhibit 6**.

CHAIRMAN THOMAS questioned the status of Montana Resources, Inc. in Butte. **Mr. Corcoran** remarked that a crew is working on cleanup and they are preparing to open the operation. REP. QUILICI added that 111 workers have been hired back. They have acquired a short-term start up contract from PP&L. They are working with other suppliers on a long-term contract.

REP. JOHNSON asked for more information regarding the continuing costs of qf contracts. **Mr. Corcoran** stated that the contracts have an annual contract adjustment provision. The cost increases for those contracts from 2000 to 2001 is approximately \$2 million. The highest price contract is approximately 60 to 75 mills while the average is 50 mills.

REP. JOHNSON questioned whether the original contract with PP&L included a fixed rate with a fixed amount of power attached. **Mr. Corcoran** explained that they have a contract with PP&L Montana that is fixed at 22.25 mills delivered. The contract was intended to be a declining volume contract in anticipation of customers moving to choice.

MR. QUANDER stated that at present the average cost of the qf contracts is set somewhere between \$50 and \$55. The current market one year ahead is about \$70. A five year contract is approximately \$55 to \$60.

Mr. Corcoran stated that, during the transition period, the money the MPC is receiving to pay those costs is the rate moratorium level of costs that are in current rates today.

SEN. SPRAGUE questioned whether MPC customers could be given a preference for new supply. **Mr. Corcoran** affirmed that this is possible. However, in a competitive environment, this could stifle rather than foster the growth of the new resources.

SEN. DOHERTY noted that on page 3 of Exhibit 6 there is a question regarding what would be accomplished by extending the transition period. He emphasized that the answer states that very little would be accomplished because the contracts expire, coincidentally, on July 1, 2002. Some people have assumed that extending the transition period also meant an extension of the rate cap. **Mr. Corcoran** remarked that there have been many changes since the legislation was drafted. The four-year transition period was established as being adequate to move this process with the potential for a two-year extension. It was fully anticipated that the MPC would continue to own generation. This has changed. The MPC never intended the rate moratorium to extend beyond July 1, 2002.

CHAIRMAN THOMAS requested an update on the stranded cost issue. **Mr. Corcoran** remarked that the largest remaining single stranded cost item would be the out-of-market costs associated with the qf contracts. This is estimated at \$425 million. The above book proceeds from the generation sale largely covered the remaining stranded cost items. COMMISSIONER ANDERSON summarized that the procedural schedule has been suspended due to litigation. There is a disagreement as to whether or not tracking is permissible.

REP. JOHNSON questioned whether stranded costs were currently being billed to customers of the MPC. **Mr. Corcoran** explained that until the stranded cost issue is resolved, the costs that continue to exist in MPC rates are current operating costs. There is a monthly operating cost associated with paying the qf contracts. The qf costs were established as a part of federal and state regulations.

MR. QUANDER remarked that MPC estimated that the difference between the cost of those contracts going forward and the estimated market price would in excess of \$400 million. The opponents to this issue are not sure that this is not an asset. They are not sure that the \$400 million exposure exists. Those contracts may be viable in the future market. One issue is whether SB390 requires a settlement and a final order by the PSC up front that establishes the stranded costs or whether this should be left open ended to rise and fall with the market through a tracker mechanism over the next 25 years.

VI REGIONAL TRANSMISSION ORGANIZATION

Allen Davis, DEQ/Western States Coordinating Council, stated that the Northwest Power Planning Council (NWPPC) has made the following conclusions in regard to the recent price spikes in California. The California Independent System Operator (ISO) maintains that prices are a manifestation of supply. California has a supply problem. The hydro system drained early this year. Coincidentally, this is when maintenance was scheduled on other generating facilities. The demand response is not present. People do not feel prices in real time. California's market intensified the problem. Gas prices have doubled but this is

inconsequential in terms of the current lack of supply.

When California restructured their electrical industry, two institutions were created: a California ISO and the Power Exchange. The California Public Utility Commission regulates the amount of electricity to go to customers. The California PUC would not allow hedging with forward contracts. This forced everyone into the short term power market. The rules of the ISO created a set of provisions that allowed the California ISO to acquire 200 to 300 megawatts for reliable supply.

The California ISO has found that the factors underlying the prices include high loads, unit outages, increased gas costs, lack of new supply, tight regional supply demand, scarcity of market power, under scheduling loads of generation, and deviation and placement of reserve purchases.

The NWPPC has stated that the region faces a 24% probability of being unable to meet loads at some level by the winter of 2003. Approximately 3,000 megawatts is needed to bring that probability down to 5%. Market prices are unlikely to support development until that time.

SEN. DOHERTY remarked that the BPA has indicated that in buying on the spot market they saw tremendous price increases. He noted that neither of the above reports mentions energy price gouging and profiteering . It appears that there is no consumer protection at the hands of the market. This situation begs for federal action.

Mr. Davis stated that this question is being noted. The Federal Energy Regulatory Commission (FERC) is investigating the issue. Investigations are also going on by the California ISO and the California PUC. The California ISO Market Monitoring Group has concluded that no one violated any rules in this market. In an attempt to make the market work better, the California ISO created a set of rules that allowed this behavior to take place. The rules are the problem.

MR. MALY remarked that another major factor that slows new generation is that there are very few turbine makers in the world and they are back ordered for years.

COMMISSIONER ANDERSON noted that even if the rules were changed, the commodity of electricity is unique because it cannot be stored. This lends the market to volatility and price spikes. Developers cannot finance a plan to meet spikes. The market may remain volatile for a long time.

MR. QUANDER stated that there are possibilities for building a 1 to 25 megawatt plant at a site to relieve

local pressure. Approximately five of his clients are at a stage of engineering studies on installing generation on site. This could be a megawatt peaking unit or it could include up to 40 megawatts. This may not be feasible but it is being reviewed.

< *RTO West*

Mr. Davis stated that it appears that there will be three RTOs in the west to include one in the northwest, one in the southwest, and the California ISO.

Characteristics of an RTO include that it be independent, have an appropriate geographic scope and regional configuration, have operational control of the transmission system, and be able to manage short-term reliability. The purpose of RTOs is to facilitate competitive wholesale power markets by eliminating the possibility that transmission owners could use the transmission system to advantage their own generation. FERC believes that RTOs will enhance reliability, create competition and improve market performance, lower costs to consumers, and reduce uncertainty about transmission investments.

The RTO West has held approximately 775 working meetings. The filing utilities are Avista, BPA, Idaho Power, Montana Power Company, PacifiCorp, Portland General Electric, Puget Sound Power and Light, Nevada Power and Sierra Pacific. The RTO West will be a not-for-profit corporation and will be an independent system operator. In the intervening period, six utilities created a company called the Independent Transmission Company (ITC). This will be a part of the RTO. The ITC will own the transmission assets owned by the following companies: Avista, MPC, Nevada Power, Portland General, Puget Sound Energy, and Sierra Pacific. The ITC companies will transfer ownership of their transmission assets to the ITC. The remaining companies will be local distribution companies. All the participants of the RTO will transfer operational control of their transmission system to the RTO.

The RTO West will provide a filing to the FERC which will include proposals for a transmission operating agreement, the overall governance structure of the RTO, and information on the other pieces of the RTO and a timeline for completion of same. The tariff development, pricing, and congestion management issues are still outstanding. There will be a 30-day comment period during the FERC filing. The complete filing is anticipated by early 2001, as opposed to October 16, 2001.

MR. WHEELIHAN questioned the cost estimates for start up of the RTO. **Mr. Davis** believed this would be approximately \$20 million over the next two years.

MR. WHEELIHAN further questioned whether the benefits of a RTO would flow equally to all consumers in the Northwest. **Mr. Davis** noted that this will depend on the final product. Some of the proposals on the table are not beneficial to Montana but, if resolved, they could be. This includes export charges. A number

of BPA customers do not feel that they would benefit from this proposal.

COMMISSIONER ANDERSON requested further information on the company rate concept. **Mr. Davis** stated that one of the biggest issues several years ago was the fact that using all the individual utility rates to develop one rate resulted in shifting costs between the various utilities. Montana has high cost transmission because we have long lines and few customers. Some of the customers in Montana would benefit under this proposals. However, the Cooperatives and Columbia Falls Aluminum did not believe that they would benefit. The RTO proposal is allowing that for the next ten years, the transmission rate would be held at the company rate to minimize this effect. The averaging will take place over the long run.

MR. COMPTON questioned what it would take for a Montana gas developer to get power to market. Secondly, he questioned who would enable or block this action. **Mr. Davis** stated that this issue is unresolved. There is a question as to whether or not the RTO will have the ability to construct facilities or whether they will have the ability to order members to construct new plants.

MR. WHEELIHAN questioned why the power would stay in Montana if the purpose of an RTO is to keep the product moving throughout the Northwest. **Mr. Davis** explained that currently the power does not stay in Montana. The power will stay close to the load if the pricing mechanisms are set up to allow that to happen. Montana should benefit with the company rate.

REP. BERGSAGEL asked the lowest size of transmission being proposed for the RTO. **Mr. Davis** explained that in some cases this could be 12.5 kilovolts, if it serves a wholesale function on the transmission system. FERC's premise is that if the transmission serves a wholesale function it belongs in the RTO.

REP. BERGSAGEL questioned the amount of current capacity on the lines that export power from Montana. **Mr. Davis** remarked that this amount varied. There are a few hours where the lines are loaded to capacity and at other times the lines are not loaded at all. Continental Energy is proposing to build a 500 megawatt facility in Butte. They see capacity on the line. **Ted Williams, MPC**, stated that transmission capability between Montana and the west is sold out in its entirety on a firm basis. There is a lot of non-firm capacity that is available for day-to-day or hour-to-hour needs. If someone wants to build generation in Montana, excess generation will be sold in spot markets. If a congested path is to be used, a congestion cost will need to be paid.

MR. QUANDER remarked that there have been discussions as to whether it would be possible to better access power from the Midwest grid to Montana. Currently the chief limitation is the intertie on the Montana/Dakota border which is limited to 150 megawatts. There have been studies on upgrading this to

400 megawatts. **Mr. Davis** remarked that at Fort Peck the turbines can be synchronized in either grid and at Miles City there is AC/DC/AC converter. The issues involved include who pays for this. FERC generally holds that the benefactor pays. Secondly, there is a question of reliability interference.

Mr. Williams noted that it would not be expensive to upgrade the DC tie itself but it would also be necessary to upgrade the transmission facilities on either side. While firm capability on the DC tie is well used, the capacity is tied up. It wouldn't make sense to upgrade the DC tie until it was used to its full capability. With the creation of the midwest ISO and RTO West, this "seam" problem should be solved.

Robert Julian, Power Procurement Group, remarked that earlier in the meeting it had been mentioned that our connection to the transmission lines into California are creating many of our pricing problems. He questioned why we were interconnected **Mr. Davis** remarked that the facilities were built in Montana because it was the least expensive place to build large facilities next to coal mines and the most attractive place to sell the power is California. Also, California and the Northwest utilities built the interties that run down the west coast to export huge amounts of power from the Northwest to California. COMMISSIONER ANDERSON added that if the power was not exported, Montana producers would not be able to recover the investment of their generators and our price would increase. **Mr. Williams** maintained that there is reliability value associated with a large geographic and a large amount of generation.

MR. QUANDER noted that another advantage in developing the RTO is the issue of pancaking. During the recent months a number of his clients were approached by entities from outside Montana that had generating capacity with fairly competitive terms. However, the "pancaking" of transmission rates caused the price to increase significantly.

MR. WHEELIHAN questioned whether steps were being taken by RTO West to ensure that building and upgrading the system would not be targeted only to the high population areas that have the largest load. Reliability is necessary throughout the system. **Mr. Davis** explained that the RTO is set up to manage the short term reliability on the system and then rely on the local networks to handle the low voltage planning as well as needed expansion.

VII STATUS REPORT ON THE BPA SUBSCRIPTION POWER SALES AND RESPONSES

Gail Kuntz, BPA, stated that the BPA is both a buyer and seller of power. The hydro system was planned on a critical water basis. Through subscription and commitments made to northwest customer groups, the 8,000 megawatts are fully committed. After the conclusion of the rate case in May, the BPA

found out that there was additional load that had not been forecasted correctly in the rate case. In critical water years, they are looking at the need to have purchased, through forward years, 3,000 megawatts of power above what is produced by the federal system. The power spikes began in June and continued through the summer. These issues caused the BPA to slowdown the signing of the remaining subscription contracts.

The last creditor in line for BPA is its payment to the U.S. Treasury to pay back the original construction costs of the dams, other debt service and long term obligations. The treasury payment probability was dipping into the unacceptable 65% range instead of the planned 80% to 88% range. The BPA is working with its customers on a cost recovery adjustment charge. This charge would be placed on the power contracts if needed in future years as a mechanism that will allow the situation of being able to pay the U.S. Treasury. The new deadline for signing contracts is October 31st. The BPA is developing a mini rate case to address the issue of a cost recovery adjustment charge (CRAC). This should be completed by late spring or early next summer. The Montana public agency customers signed pre-subscription contracts approximately two and a half to three years ago. These contracts are not expected to end up under CRAC by virtue of having been signed a long time ago. For all of the power sold outside the pre-subscription contracts, the CRAC would be an issue. This leaves a question of what happens to the financial settlement part of the benefits that would be conveyed to the residential/small farm customers of IOUs. In regard to the 24 megawatts, the offer included power and cash. There is a question as to whether or not the CRAC should apply to the cash settlement. The BPA is open for comment, through October 16th, in regard to the proposal. This will then go into a contested case proceeding.

VIII ACTION ITEMS; LEGISLATIVE AGENDA

1. Governor's Working Group on Electricity

REP. QUILICI reported that the working group was set up following the price spikes experienced by several large industrial customers. The members include representatives from electrical suppliers, large industrial customers, the Northwest Power Planning Council and the PSC. REP. QUILICI is also a member of this group. He explained that Montana Resources, Inc. has faced the layoffs of 300 employees due to electrical supply prices. This is a regional problem.

John Hines, Northwest Power Planning Council, stated that they looked to the BPA to see if there was additional power through non-firm sales. Another area was the AC/DC/AC intertie connect in Miles City. They reviewed whether the capacity could be increased or whether there was any unused capacity. The third area was to work with the Department of Environmental Quality (DEQ) to review whether or not

there would be a way to improve the air quality permitting process. This would involve timely action in regard to installing new on-site generation at the plants or to build new generation.

In regard to any proposal to the BPA, the intent was not to jeopardize the treasury repayment probability or the preference rate. The BPA did not have any surplus sales available. He added that recently the Midwest/Northeast coalition requested that the GAO audit the BPA for excessive rates being charged to California for surplus sales. They maintain that the only entities benefitting by the high sales are a few select utilities and large customers.

The Miles City interconnect has some unused capacity in the January/February time frame. There may be possibilities to purchase load. In regard to upgrading the facilities, if there is a 5 mill price differential between that power pool and the northwest power pool over a sustained 10 year period, it would be feasible to upgrade that system and be able access an additional 200 megawatts. This would meet the large industrial customers load requirements over that time frame.

In regard to the permitting process, the greatest problem appears to be the time frame involved in preparing the application in terms of preliminary and background information before the permit was deemed acceptable for consideration. Efficiency can be improved and then the 60 day process should not be a problem.

The working group also discussed the need for supply. If there are a sufficient number of suppliers producing electricity, it will still be necessary to have the same equation on the demand side for a competitive wholesale/retail market. Consumers need to be able to respond to prices and make conscious choices as to consumption in relationship to price for that particular time period. Large consumers need to be able to resell their electricity back into the grid at times when electricity prices are high. If large firms would be willing to curtail their operations for a few hours to sell the power back into the grid, at a substantial profit to themselves, this would delay the need for new generation as well as allow the system to run more efficiently. It would avoid the need for brownouts or rolling blackouts. Developing both sides of the market may take some legislative changes.

He suggested a phased-in competitive market instead of anticipating that this will occur on July 1, 2002. This would be easier on consumers and would give them time to see real time prices to make their choices. The role of default supplier needs to be reviewed. When the legislation was first developed, it was envisioned that the default supplier would be a place of last resort. The current situation is not favorable for consumers to go to choice. This should be a haven for a certain time period.

MR. QUANDER provided a copy of "Bloomberg PowerLines", **Exhibit 7**, and pointed out that the index for regional electricity prices is still over \$100 per megawatt hour and also the fact that the rest of the country has prices significantly lower than the Western area. The companies that he represents have prepared interim solutions to try to stay in business. Short-term, partial contracting has been set up. Engineering for on-site generation has been started.

He maintained that the industrial customers are not in the least interested in re-regulation. This would be a waste of resource that needs to be devoted to making the competitive system work. Industrial customers are interested in looking at options to smooth the transition process. In Pennsylvania law, during the transition period customers are allowed to move back and forth between the market and tariffed (regulated) rates. The customer can return to a tariffed rate, subject to some conditions, for a period of time and be treated as a new customer. This would be a tool to provide a safety net through the transition. Pennsylvania saw this as critical for customers of all sizes. This has not been endorsed by the Large Industrial Customers or the Working Group. This has been misunderstood as suggesting a desire to return to a re-regulated market.

REP. QUILICI maintained that although it has been found that the power generators and brokers have been playing by the rules, a lot of money has been made over the last few months. FERC needs to look into changing the rules.

MR. QUANDER added that most of the people who went into the marketplace had savings from 5% to 15%. This savings is an on-paper savings because the stranded costs issue has not been resolved. Most contracts were short term due to this uncertainty.

Mr. Corcoran noted that the large industrial customers were afforded the opportunity to immediately move to the market as a part of the deregulation process. They experienced the risks and the rewards immediately. Smaller customers were afforded the protection over the four year transition period to go to the market and return. Allowing large customers to go to competitive markets when prices are low and then return to the regulated tariff when the prices are high is a situation that fosters gaming. MPC has a negotiated contract with PP&L Montana of 22.25 mills. This contract was set out as a declining volume contract with the transition to customer choice.

MR. QUANDER stated that the Pennsylvania option included a 12-month requirement to avoid "gaming". The large industrial customer group has not made the assumption that they would be included in the buyback contract. They would be treated as a new customer. A new customer would come in under a tariffed rate.

Why would a returning customer be treated worse than a new customer? This option would be good for all customers but it is not a major interest for the large industrial customer.

Russ Ritter, Montana Resources, Inc. (MRI), stated that the MRI moved to choice a year ago. The price of copper at that time was approximately 62 cents a pound and there was an option of closing the mine due to operational losses or cutting expenses. Their largest expense, other than payroll, is electrical power. They were able to keep 365 persons working. There are 165 people currently working at the mine and they are hopeful that with a new contract, the price of power will drop. MRI is totally in support of deregulation.

2 *Extending the period in which Universal System Benefits charges and programs are required by law, or otherwise modifying current USBC provisions*

Ralph Cavanaugh, Natural Resources Defense Council, remarked that the weighted average wholesale price of electricity on the California wholesale markets for June, July, August, and September is 14 to 15 cents per kilowatt hour. We need to think about solutions to this dilemma. This is a regional problem. The entire Western grid is under severe strain. We have under invested in both energy efficiency and supply over the last decade. The Universal System Benefits Charge (USBC) is a crucial part of solving the problem of lifting the load on the system by creating the basis for long-term investment in energy efficiency and renewable energy. By extending the USBC, Montana can help the process by placing needed pressure on all the Western states to collectively take action to lighten the load on the system and bring some relief in the wholesale price markets. The California Legislature, by overwhelming bipartisan majorities, has extended its USBC by a full ten years, expanded the amount of investment, and added an inflation adjustment.

Motion: SEN. LYNCH MOVED TO EXTEND THE PERIOD IN WHICH UNIVERSAL SYSTEMS BENEFITS CHARGES AND PROGRAMS ARE REQUIRED BY LAW. THIS WOULD BE A TWO-YEAR EXTENSION AT THE CURRENT RATE.

REP. JOHNSON questioned whether the current situation is adequate. **Mr. Cavanaugh** remarked that the investments are long-term investments. The ability of the system to recruit and retain top level managers is severely affected if these investments are seen as short term. The Montana Legislature anticipated the need for a default supplier. California's failure to do so has been costly to the state. SB406, the Montana option, now has its own California Legislative Study Task Force.

REP. BERGSAGEL remarked that the USBC as currently set up taxes one segment of a society for a

specific purpose. If this is for the good of all of society, all of society should pay the tax. This should not be paid by the electrical consumers only. There is energy usage from gas companies, propane, stove fuel, etc. There is no system in place to assess a fee for these energy usages. The Legislature needs to address this issue. A utility should not be selectively taxed for this purpose. A USBC needs to be set in place with a General Fund mechanism so that all of society contributes to the program.

REP. QUILICI asked the percentage of the USBC in California. **Mr. Cavanaugh** explained that this is 3%. Since rates are higher in California, 3% would represent a much higher charge in mills per kilowatt hour than a 3% charge would represent in Montana.

MS. HADLEY described a recently funded wind farm in northwestern Montana. This is a 22 megawatt facility. Montana has a lot of opportunities to develop new business based upon renewable energy. Renewable systems are cash intensive systems. In regard to the above project, the commitment was for \$500,000 a year for three years.

COMMISSIONER ANDERSON remarked that these programs are a partial response to the price spike situation. Conservation practices help people manage their demand. Renewable energy adds to the diversity of the supply. Many of these programs are aimed at electricity consumers. The people who pay the bills are the beneficiaries. This is a good match that many taxes ought to achieve. The programs need continuity and stability. Many require a long implementation process. Uncertainty is a handicap to these programs.

MR. LEUWER provided and reviewed a memo to the TAC regarding USBC, low income needs, and suggested TAC recommendations, **Exhibit 8**. Large industrial customers have contributed approximately \$200,000 to Energy Share for low income programs. This has been a substantial benefit to low income people. The MPC's Advisory Committee has been very effective. He encouraged removing the end date from the low income USBC and extending the charge to propane use. He also encouraged an informal process for discussion on the various designs of different programs.

Vote: The motion carried on roll call vote 7-4. (Attachment #3)

3 Default supply definitions and obligations; PSC designation of default suppliers

Motion: REP. BERGSAGEL MOVED THAT THE DEFAULT SUPPLIER BE THE OWNER OF POLES AND WIRES UNTIL THE PSC DEVELOPS THE RULES ASSOCIATED WITH THE DEFAULT SUPPLIER STATUS.

COMMISSIONER ANDERSON stated that the PSC has been complying with SB406. The rules for licensing of default suppliers have been completed. The next step is a set of rules describing how the PSC will select one or more default suppliers. There have been no applications for default supplier thus far. Following the recommendation of the TAC, the PSC is taking a slow track in this process. As a part of the customer service rules adopted by the PSC, there is a requirement that the incumbent distribution company serve as the default supplier. By rule the MPC and its successor have the responsibility to serve as the default supplier until July 1, 2002. On that date the PSC has the option to extend the transition period up to two years. He believed the motion was a statement of the status quo.

REP. JOHNSON maintained that the TAC's recommendation to the PSC was to expedite adoption of rules for qualifications for a default supplier. The default supplier would not need to be chosen until after the end of the year.

Vote: The motion carried with SEN. DOHERTY voting "no".

4 *Extending the period in which Universal System Benefits charges and programs*
(Cont'd)

MR. WHEELIHAN explained that during the discussions of SB390, the Cooperatives maintained that when they purchased wholesale from BPA, they pay for conservation programs in those rates. They wanted to use this as a credit for USBC reporting requirements. It was their understanding that those credits were clearly allowable under the law. The Natural Resources Defense Council (NRDC) proposed an amendment to disallow this credit. This amendment was unanimously rejected. The TAC worked on proposed USBC rules for guidance on the allowance of credits. The proposed rules allowed those conservation programs to be counted. The TAC made a recommendation to the Department of Revenue (DOR) that the proposed rules be adopted. The DOR held a hearing on the proposed rules. At this hearing the NRDC and MPC testified that the legislative intent was not to allow those amortized conservation credits. The DOR's final rule makes it less clear as to whether or not these credits can be counted. He requested that the statute be clarified by adding the words "amortized or non-amortized". This change would be made in § 69-8-402(2)(b), **Exhibit 9**. Disallowing the credits could place the membership at risk of several million dollars.

Motion: SEN. LYNCH MOVED THAT § 69-8-402(2)(b) BE AMENDED TO ADD THE WORDS "AMORTIZED OR NON-AMORTIZED" EXPENDITURES.

REP. BERGSAGEL stated that it did not make sense to allocate USBC costs in a one year period. These

costs need to be amortized over a period of time. This makes good business sense.

DEB YOUNG explained that the MPC does not claim any debt servicing under the USBC Program. The MPC increased rates by \$7.6 million to fund the USBC.

SEN. DOHERTY questioned the basis for the DOR ruling. MR. WHEELIHAN explained that at the DOR hearing on the proposed rules, the NRDC stated that this was not the legislative intent. The MPC also testified that these credits should not be counted. The DOR changed the wording of what is allowable under the expenditures. The language is vague and the Cooperatives are not certain whether this will be subjected to a challenge. They want to be able to use the funds for conservation programs.

Mr. Hines remarked that there was one perspective put forth to the DOR regarding expenditures of previously completed conservation programs and whether those should be allowed. Included in the BPA rates were conservation programs that had been amortized for the past 10 years. If amortization was allowed, an entity buying power from the BPA in 1998 could claim this as an expenditure. The argument against this perspective was that only prospective conservation expenditures should be allowed.

MR. WHEELIHAN affirmed that there have always been philosophical differences regarding USBC. When SB390 was negotiated it was clearly contemplated by the parties, with the exception of the NRDC, that amortized conservation credits be allowed whether they were completed or not. The added language will clarify the legislative intent.

Gary Wiens, Montana Cooperative Association, added that the House Appropriations Committee rejected the NRDC proposal in the 1999 Session.

REP. BERGSAGEL believed the motion was congruent with the legislative intent and the recommendations of the TAC USBC Subcommittee.

Vote: The motion carried with SEN. DOHERTY voting “no”.

5 *Extending the transition period for residential/small commercial customers beyond
June 30, 2002*

**Motion: SEN. LYNCH MOVED TO EXTEND THE TRANSITION PERIOD FOR
RESIDENTIAL/SMALL COMMERCIAL CUSTOMERS BEYOND JUNE 30, 2002.**

MR. MALY remarked that there may be legislative proposals coming from outside the TAC to extend the transition period even beyond 2004. The PSC has the authority to extend the transition period. This would extend the transition period as an act of the legislature.

COMMISSIONER ANDERSON did not oppose the motion. It would remove the PSC's discretion. There is virtually no competition in the residential market. Energy West Resources is sending its customers back to the MPC because they cannot find wholesale rates less expensive than tariffed rates.

REP. QUILICI remarked that the buyback agreement with the MPC will end in 2002. The concern is the cost of the power after 2002.

COMMISSIONER ANDERSON affirmed that extending the transition period would not affect the price paid by residential customers after July 1, 2002.

REP. DELL questioned whether the PSC could encourage the process of a cooperative effort to buy forward to hedge the market.

COMMISSIONER ANDERSON stated that the PSC is responsible for selecting the default supplier. The sooner this is completed, the default supplier will be in a better position to buy into the futures market. The problem is the quantity. Extending the transition period would give some certainty to the load requirement of the default supplier.

Tom Schneider remarked that there has been no transition because of market conditions, the rate moratorium, and other changes which have occurred. Extending the transition period to four years would provide a time frame for real transition to competition and real opportunity to buy cost-effective default supply.

Mr. Hines remarked that the utility could buy forward but would not know the amount of future load. Under the existing legislation, customers are free to exit and enter at their own free will.

Mr. Corcoran questioned what this motion would do relative to the function of the default supplier. The buyback contracts will be gone on July 1, 2002. If this is extended for two years, a large portion of the base load of the default supplier will continue to be small customers. SB 406 established the level of customers that would be served under the default supplier at 100 kw. He suggested that the TAC not recommend an extension of the transition period at this time. The default supplier process should be expedited. The focus

needs to be on how customers will be served.

SEN. LYNCH withdrew his motion. His understanding is that the PSC has the authority to extend the transition period.

COMMISSIONER ANDERSON maintained that the question is when the PSC would do so. It may take longer than a year from now before this issue is before the PSC.

Motion: SEN. DOHERTY MOVED A RECOMMENDATION TO THE LEGISLATURE TO EXTEND THE TRANSITION PERIOD FOR RESIDENTIAL/SMALL COMMERCIAL CUSTOMERS BEYOND JUNE 30, 2002.

SEN. DOHERTY believed it was the TAC's obligation to make a recommendation to the legislature in regard to the transition period. The TAC has reviewed the issue and doesn't believe that there will be residential market competition developing by June 30, 2002.

Substitute Motion/Vote: REP. JOHNSON MOVED THAT THIS PARTICULAR ISSUE NOT BE ADDRESSED AT THIS TIME. The motion failed.

MR. MALY remarked that the change in the structure and condition of the marketplace is central. He raised a concern whether or not the default supplier, under an extended transition period, would have no option but to purchase market-priced power and charge a regulated rate.

REP. PECK maintained that the regulated rate would not apply in the additional two years.

MR. MALY noted that the default supplier is under regulation but not under the rate cap. The prices charged to customers would be regulated, the source of the power would not.

Ron Perry, Commercial Energy, stated that ratepayers do not know what the market price will be on July 1, 2002. The default supplier has an obligation but has not been given any direction. The issue that needs to be addressed is how such authority can be given to the default supplier so that price insulation can be put into place before it is too late.

Vote: Senator Doherty's motion failed on roll call vote 5 "yes" and 6 "no". (Attachment 4)

Motion/Vote: REP. JOHNSON MOVED THAT THE TAC ACKNOWLEDGE THAT THE ISSUE OF DEFAULT SUPPLIER HAS BEEN REVIEWED AND THAT THE DEFAULT SUPPLY SERVICE SHOULD BE A PART OF THE CONTINUING CONVERSATION OF THE TAC, THE PSC, AND THE LEGISLATION. The motion carried.

Motion/Vote: REP. JOHNSON MOVED THAT THE TAC RECOMMEND TO THE LEGISLATURE THAT A TRANSITION COMMITTEE BE CONTINUED FOR THE NEXT BIENNIUM. The motion carried.

6 *Enabling Cooperatives to serve urban customers without first forming for-profit subsidiaries that will be regulated.*

MR. WHEELIHAN reported that copies of proposed legislation have been mailed to TAC members. When the enabling statute was passed in 1937, a provision in the statute stated that a Cooperative could not serve in a city with a population of 3500 or greater. As the cities have grown out into the Cooperatives' service territories, they do serve in those areas. When Flathead Electric Cooperative purchased an Investor Owned Utility (PacifiCorp) in the Flathead Valley and due to the enabling statute, the Flathead Electric Cooperative was forced to form a for-profit subsidiary to serve the customers in Kalispell, Whitefish, and Columbia Falls. Elimination of the 3500 population rule would allow Flathead Electric Cooperative to roll those consumers into its Cooperative. Another issue is that the enabling statute currently holds that to be a member of a rural electric Cooperative, you must receive electricity from the cooperative. With the changes due to restructuring, a person who is receiving wires and poles service may not be receiving electricity from the Cooperative. This person should still be allowed to be a member of the Cooperative. The proposed legislation does not affect taxes. If members are rolled into a cooperative, it would be anticipated that they would not be regulated by the PSC. If a Cooperative were to acquire other facilities in the MPC territory, those facilities would remain regulated by the PSC due to the successor clause in SB390. The proposed legislation does not ask for expanded powers or purposes for Cooperatives.

SEN. SPRAGUE questioned whether the new buyer of the MPC was aware of the proposed legislation.

MR. WHEELIHAN maintained that the proposed legislation would not affect that purchase.

REP. FISHER questioned whether this proposed legislation would allow Cooperatives to solicit customers in other metropolitan areas on a piecemeal basis. MR WHEELIHAN stated that there is a territorial integrity law which sets out service territories. The proposed legislation would not allow hostile takeovers of any IOU facilities. If a Cooperative opens its system to competition and forms a for-profit subsidiary, it does

have the ability to sell energy but could not acquire the poles and wires unless the owner of the same wanted to sell the poles and wires.

John Alke, MDU, expressed concern about the proposed legislation. The Flathead Electric Cooperative has stated, in a case currently before the PSC, that there is a connection between the territorial integrity act and the 3500 population limitation in the enabling statute.

MR. WHEELIHAN noted that further discussion with all parties is necessary and this matter should be taken up at a later time.

REP. BERGSAGEL requested that the Cooperatives provide further information at the next meeting.

COMMISSIONER ANDERSON noted that the PSC is well aware of the issue. The Flathead Electric Cooperative has a business problem. He believed that the customers that live in the cities should be asked their preference.

CHAIRMAN THOMAS recommended that items 5 through 8 of the agenda be continued to the next TAC meeting.

MR. MALY stated that the TAC is required to make a report to the Legislature by November 1st. His understanding is that no formal recommendation has come forth for statutory changes, other than those concerning the USBC.

IX NEXT MEETING

CHAIRMAN THOMAS recommended that the date of the next meeting be set for December 7, 2000.

X ADJOURNMENT

There being no further business, the meeting was adjourned.

Sen. Fred Thomas, Chairman

